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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

A.F.P.; and J.F.C.,

Plaintiffs,

v.

United States of America,

Defendant.

Case No. 1:21-cv-00780-ADA-EPG

JOINT MID-DISCOVERY STATEMENT

DATE : February 22, 2023
TIME : 10:30 a.m.
CTRM : 10, 6th Floor
JUDGE: Honorable Erica P. Grosjean

The parties, through counsel, hereby submit the following Mid-Discovery Report as required by the scheduling order (EFC 35):

A. STATUS OF DISCOVERY:

The parties exchanged initial disclosures on October 13, 2022.

Pursuant to the parties' agreement, the United States has voluntarily produced over 224,000 pages of documents consisting of: (1) "Common Discovery" produced in *A.P.F. v. United States*, No. 20-cv-00065-PHX-SRB (D. Ariz.), and *C.M. v. United States*, No. 19-cv-05217-PHX SRB (D. Ariz.)¹ and (2) Plaintiff-specific documents consisting of each Plaintiff's Alien File ("A-File"); I-213 form, subject activity logs, and any transfer or detention records, and Plaintiff J.F.C.'s ORR records.

Plaintiffs voluntarily produced 416 pages of documents that (1) concern Plaintiffs' apprehensions, detentions, separation, or reunification, and (2) medical and any other records concerning each plaintiff's alleged emotional distress or other injuries.

The United States has sent Plaintiffs' written waivers to obtain documents and investigate their physical, psychological, and severe emotional distress claims. Plaintiffs' counsel is in the process of getting the waivers signed. The parties have also generally discussed the timing and location of Plaintiffs' depositions this summer and necessity of Independent Medical Examinations to evaluate Plaintiffs' severe emotional distress claims and J.F.C.'s hearing loss claim. Plaintiffs have agreed to participate in Independent Medical Examinations by the United States' retained experts. The United States currently anticipates this testing will include having psychiatrists interview and conduct psychiatric evaluations of both Plaintiffs, psychological testing of both Plaintiffs, and an Otological/Neurotological examination and audiology testing of J.F.C. The location, timing, and specific details of these examinations will be determined once experts are retained.

¹ The "Common Discovery" generally consists of documents regarding: (1) the creation, development, and implementation of the Zero-Tolerance policy (with particular emphasis on application of the Zero-Tolerance policy to adults traveling with family units); (2) designation of minors as unaccompanied children ("UCs") when being separated from a parent while in CBP custody; (3) ORR placement of UCs after being separated from a parent while in CBP custody; (4) tracking of UCs and establishing communication with parents after being separated while in CBP custody, and (5) policies or procedures of CBP, ICE and HHS concerning separation, detention during separation, or reunification.

1 **B. ADDITIONAL DISCOVERY PLANNED:**

2 Now that the parties have exchanged some targeted documents and initial disclosures they
3 anticipate conducting more focused discovery generally as follows:

| | |
|------------------------------------|-------------------------|
| 4 Written discovery: | March-June, 2023 |
| 5 Subpoenaing records: | March-June, 2023 |
| 6 Depositions: | July-September, 2023 |
| 7 Independent Medical Exams of Ps: | Before March 1, 2024 |
| 8 Plaintiffs' Expert Disclosures | January 16, 2024 |
| 9 Defendant's Expert Disclosures | March 1, 2024 |
| 10 Rebuttal Expert Disclosures | April 1, 2024 |
| 11 Expert Depositions | February to May 1, 2024 |

12 **C. POTENTIAL FOR SETTLEMENT:**

13 A meaningful settlement conference cannot be conducted at this time. Global settlement
14 negotiations for this and similar cases across the country ended without agreement in December 2021.
15 The parties will notify the Court if a settlement conference could be helpful. At this time, it is uncertain
16 whether and when that might be.

17 **D. OTHER ISSUES PENDING:**

18 The Court did not modify the Federal Rules of Civil Procedure with respect to written discovery
19 or depositions in this case. Plaintiffs have indicated a desire to take depositions of government official
20 and border patrol agents to ascertain all of the facts surrounding the separation of J.F.C. from A.F.P. and
21 the policy decisions underlying the separation. The United States has offered to provide Plaintiffs with
22 transcripts of 15 depositions concerning policy issues taken in the *C.M.* and *A.P.F.* cases on the
23 condition that Plaintiffs agree to 10 depositions in this case, enter the same protective order and
24 clawback agreement as in *C.M.* and *A.P.F.*, and agree to not re-depose the same witnesses or witnesses
25 with equivalent knowledge in this case.

26 The parties have met and conferred regarding the United States' offer, and the Plaintiffs have
27 expressed their objection to entering any such agreement in the dark without having any knowledge of
28 the substance contained in the deposition transcripts. Because Plaintiffs have not had the benefit of

1 reviewing the transcripts, Plaintiffs have agreed to the exchange of the 15 transcripts, but reserve the
2 right to seek further depositions concerning policy issues to the extent Plaintiffs find that any issues
3 relevant to Plaintiffs were not already covered by the 15 transcripts. Plaintiffs also continue to reserve
4 their right to conduct narrow and focused depositions of prior witnesses if limited additional testimony
5 is necessary for Plaintiffs to prepare their case for trial. Discovery is still early in this case and the
6 parties will continue to meet and confer about these issues prior to bringing them to the Court.

7 Respectfully submitted,

8 Dated, February 13, 2023

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United States Attorney

10 /s/ Kelli L. Taylor
11 KELLI L. TAYLOR
12 PHILIP A. SCARBOROUGH
Assistant United States Attorneys

13 Attorneys for Defendant United States

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15 Dated, February 13, 2023

MORGAN, LEWIS & BOCKIUS LLP

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17 /s/ Brianna Howard (as auth. 2/10/23)
BRIANNA HOWARD

18 Attorneys for Plaintiffs
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